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VIRGINIA LAW REVIEW

Published Monthly, During the Academic Year, by University of Virginia Law Students

Subscription Price, \$3.50 per Annum - - 50c per Number

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On the last day of this month will commence the celebration of the Centennial of the University of Virginia. It is to our Alma Mater upon the completion of her first hundred years of noble and useful service that the Editors of the REVIEW with pride and devotion dedicate this number.

We earnestly hope that every alumnus of the Law School will obey the Peremptory Writ served upon him and return to take part in the celebration. Of especial interest will be the Law departmental meeting on the afternoon of June 3rd, at which it is planned to form an Alumni Association of the Law School. Prior to this there will be a meeting of all former members of the Editorial Board of the REVIEW to consider means of coöperation in effectively furthering its interests.

OFFENSES AGAINST BOTH STATE AND CITY AS CONSTITUTING DOUBLE JEOPARDY.—It is the purpose of this note to consider whether one who has been punished under a city ordinance, and later convicted for the same offense under general State law,

has been subjected to that double jeopardy upon which falls the prohibition of the Federal and various State Constitutions, namely; that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb".¹

The logical orientation of this subject is the relation between State and municipality. The latter is but a chartered offspring of the parent State, dependent for its existence upon the sovereign power which can revoke that at will which it has given by pleasure,² but the congregation of its citizens and the complexity of its life demand a local punitive power with which to protect itself within its own limits.³ The supply for this inherent demand is provided, also by the State, in the form of police power, which stands as the guardian right of separate government as exercised by the city under its charter.⁴ To regulate the public health, morals and good order within the municipality concerns the city directly and the State indirectly, but the unit immediately interested should be and is considered the sole author of its own protection.⁵ Such, then, is the general rule: that while the law of a State as a whole extends to every portion of that State, the municipal police power, once expressly conferred, is a cumulative, though independent, obligation resting upon all who enjoy the privilege of living close to a pulse of the national life, with its peculiarly interwoven fabric of human relationships.⁶

State and municipality are concentric spheres, and offenses against both are punished in totally different ways and by dissimilar agencies; one by the local power of police, and the other by the general criminal law, thus evolving a plurality of effect from a unity of cause.⁷ Take, by way of analogy, the case of a man expelled from his club for stealing a book from its library: certainly such expulsion does not minify the right of the State to punish him for larceny, for the penalty imposed by the club was in its nature civil, while the action of the State would be criminal.⁸ And this is the gist of the matter, for the constitutional provision above quoted has been interpreted to apply to

¹ Federal Constitution, Amendment V.

² *Heller v. Stremmel*, 52 Mo. 309; *Covington v. Kentucky*, 173 U. S. 231. See 1 DILLON, MUNICIPAL CORPORATIONS, 5th. ed., § 92: "Subject to constitutional limitations presently to be noticed, the power of the legislature over such corporations is supreme and transcendent; it may, where there is no constitutional inhibition, erect, change, divide, and even abolish them, at pleasure, as it deems the public good to require".

³ *State v. Lee*, 29 Minn. 445, 13 N. W. 913; *Waldo v. Wallace*, 12 Ind. 569, 584.

⁴ *People v. Hanrahan*, 75 Mich. 611, 42 N. W. 1124; *Nashville, etc., R. Co. v. City of Attalla*, 118 Ala. 362, 24 So. 450.

⁵ *City of Crawfordsville v. Braden*, 130 Ind. 149, 28 N. E. 849.

⁶ *McInerney v. City of Denver*, 17 Colo. 302; *Shafer v. Mumma*, 17 Md. 331; *Wragg v. Penn Township*, 94 Ill. 11; *Morris v. State*, 18 Ga. App. 684, 90 S. E. 361; *Mayor v. Allaire*, 14 Ala. 400.

⁷ *Freeland v. People*, 16 Ill. 380.

⁸ *Hughes v. People*, 8 Colo. 536; *Levy v. State*, 6 Ind. 281.

criminal⁹ and not to civil cases,¹⁰ it being held that where the law permits the recovery of a civil fine for an offense also made a crime, the trial of the offender for the crime does not bar the action for recovering the penalty.¹¹ The conclusion, therefore, is: that where the State has expressly granted the punitive power of police, a conviction by the city does not bar a subsequent one by the State, since the offended jurisdictions, the nature of the offense, and the punishments involved are in each case legally distinct.¹²

Where, however, there has been only a general grant of this power, such as the mere authority to make by-laws for the good government of the place, the city has no implied authority to particularize in punishing by ordinance an act made criminal by the general State law.¹³ The city can be only derivatively independent of the State, and cannot of its own volition supersede the laws of the government which created it.¹⁴ This, it is believed, is the principle underlying the cases upon this subject, namely; the definition of the power given to the city. Observe the language of Judge Cooley, in his work upon Constitutional Limitations:

"Indeed, an act may be a penal offense under the laws of the State, and further penalties, *under proper legislative authority*, be imposed for its commission by municipal by-laws, and

⁹ Berkowitz v. U. S., 93 Fed. 452; Brink v. State, 18 Tex. App. 344.

¹⁰ Latshaw v. State, 157 Ind. 194, 59 N. E. 471.

¹¹ Latshaw v. State, *supra*; Memphis v. Smythe, 104 Tenn. 702, 58 S. W. 215.

¹² Hunt v. City of Jacksonville, 34 Fla. 504, 16 So. 398; Hamilton v. State, 3 Tex. App. 643. In Mayor v. Allaire, *supra*, Collier, C. J., said:

"The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation, for the enforcement of good order and quiet within the limits of the corporation. * * * The offense against the corporation and the State, we have seen are distinguishable, and wholly disconnected, and the prosecution at the suit of each proceeds upon a different hypothesis—the one contemplates the observance of the peace and good order of the city—the other has a more enlarged object in view, the maintenance of the peace and dignity of the State."

¹³ Judy v. Lashley, 50 W. Va. 628, 41 S. E. 197; State v. Langston, 88 N. C. 692. In 2 DILLON, MUNICIPAL CORPORATIONS, 5th. ed., § 632, it is said: "Where the act is, in its nature, one which constitutes two offenses, one against the State and one against the municipal government, the latter may be constitutionally authorized to punish it, though it be also an offense under the State law; but the legislative intention that this be done ought to be manifest and unmistakable, or the power in the corporation should be held not to exist."

For cases holding a grant of general power open to implication when not in contravention of the Constitution or of State laws, see St. Louis v. Bentz, 11 Mo. 43; City of Amboy v. Sleeper, 31 Ill. 499; Rogers v. Jones, 1 Wend. (N. Y.) 237.

¹⁴ *Ex parte Bourgeois*, 60 Miss. 663; Mayor v. Hussey, 21 Ga. 80.

the enforcement of the one would not preclude the enforcement of the other." ¹⁵ (*Italics supplied.*)

When the city goes beyond the express limits and reasonable intendment of the police power given it,¹⁶ or endeavors to legislate *criminaliter*, by automatically making acts which are already crimes against State law punishable by the city also, the plea of *autrefois convict* or *acquit* must be sustained upon the second indictment.¹⁷ The offense must fall within a police power plainly and unmistakably conferred upon the corporation by a State anxious to safeguard those localities within itself whose concentrated activity betrays the heart of its existence.

With this distinction between express and implied grants of police power clearly in mind, it becomes pertinent to consider the extent to which the municipality can punish, without affecting the subsequent right of the State to proceed in the same matter. Convictions under city ordinances for the following offenses have been held to fall within this liberty: carrying concealed weapons,¹⁸ keeping houses of prostitution,¹⁹ disturbing the public peace by disorderly conduct,²⁰ violation of Sunday laws,²¹ selling of opium,²² or liquor without a license,²³ and maintaining gambling houses.²⁴ Such acts come within the realm of local police rather than of general judiciary power, and admit of two convictions, since their commission inside urban limits has robbed them, so far as the restricted boundaries of the city are concerned, of their extended criminal character in the State at large.²⁵ The latter, it may be noted, is not desirous of giving to its creatures, the cities, a wide or unlimited power, but confines it to the ordi-

¹⁵ COOLEY, CONSTITUTIONAL LIMITATIONS, 6th. ed., p. 239.

¹⁶ *State v. Mott*, 61 Md. 297.

¹⁷ *Mayor v. Hussey*, *supra*; *Richardson v. State*, 56 Ark. 367, 19 S. W. 1052; *Bryan v. Com.* (Va.), 101 S. E. 316; 6 VA. LAW REV. 372. *Contra*, see *City v. Cook*, 4 Neb. 101; *State v. Crummey*, 17 Minn. 50. An excellent test for distinguishing these cases was laid down by Wade, C. J., in *Morris v. State*, *supra*: "It is therefore apparent that the controlling question in determining whether or not the plea of former jeopardy was good depends on whether the ordinance of the municipality can be violated where some essential ingredient necessary to constitute the offense under the State law is altogether lacking from the act punished under the municipal ordinance, or some additional ingredient is included."

¹⁸ *Town of Van Buren v. Wells*, 53 Ark. 368, 14 S. W. 38.

¹⁹ *Kemper v. Com.*, 85 Ky. 219, 3 S. W. 159.

²⁰ *McRea v. City of Americus*, 59 Ga. 169. *Contra*, as to assault and battery, *State v. Freeman*, 56 Mo. App. 579.

²¹ *Purdy v. State*, 68 Ga. 295.

²² *Ex parte Hong Shin*, 98 Cal. 681, 33 Pac. 799.

²³ *State v. Reid*, 115 N. C. 741.

²⁴ *Robbins v. People*, 95 Ill. 175.
²⁵ In *McInerney v. Denver*, *supra*, Helm, J., said: "Whatever may be the view concerning the gravity of the offense against a State law, the very fact that the legislature authorizes the city to deal with the same subject by ordinance indicates that to the legislative mind, the act also properly constitutes one of those petty offenses regarded as local injuries."

nary scope of police jurisdiction. Beyond the regulation of public health, order and morals it is usually unwilling to go.²⁶

There remains but to present the other side of the picture. Some courts asseverate that two convictions can be supported only when there are distinguishing elements in the offense as denounced by both city ordinance and State law.²⁷ It is submitted that this position neglects the salutary doctrine that an offense against the State, though criminal, becomes an aggravated and pragmatic nuisance when committed in a city. Other courts hold that double jeopardy is 'an insurmountable objection, and that the court, municipal or State, which first acquires jurisdiction of the case must be the sole tribunal of its prosecution.²⁸ This view fails to account for the importance of the city's police power as a cumulative agent of the State's protection, and it is suggested that such omission opens this doctrine to objection.

In conclusion, the true rule on the subject appears to be this: the offense whose actor is sought to be twice exposed to punishment must be legally divisible by two. To this end the State legislature must have expressly bestowed upon the municipal corporation the gift of local police regulation,²⁹—a gift dependent upon no implication of even an express but general power. The effect of such legislation is to present two jurisdictions and two modes of punishment, that of the city civil, and that of the State criminal, thus giving to the offense a double nature which calls upon itself the vengeance of two distinct laws. Where this legal arithmetic can be compassed, both city and State may prosecute the offender; where it cannot, he is protected by the Constitution.

W. C. B.

THE RIGHT OF THE MAJORITY OF SHAREHOLDERS OF A CORPORATION TO SELL ALL THE CORPORATE ASSETS AGAINST THE WILL OF THE MINORITY.—There has been a great deal of litigation in the courts of this country over the question of whether or not a majority of the shareholders of a solvent going corporation can sell all the corporate assets over the dissent of a minority shareholder. Naturally two views have arisen: viz, the "strict" view which does not permit such a sale but allows the objecting minority to compel the assets to be retained by the corporation, and the "liberal" view which allows such a sale in the absence of fraud and oppression upon the part of the majority.¹ The question is now sometimes regulated by statute, but the remainder

²⁶ *Commonwealth v. Turner*, 1 Cush. (Mass.) 493; *Howe v. Treasurer of Plainfield*, 37 N. J. L. 145.

²⁷ *Taylor v. City of Landersville*, 118 Ga. 63, 44 S. E. 845.

²⁸ *State v. Cowan*, 29 Mo. 330; *State v. Thornton*, 37 Mo. 360; *Lynch v. Com.* (Ky.), 35 S. W. 264.

²⁹ *Kassell v. Mayor of Savannah*, 109 Ga. 491, 35 S. E. 147.

¹ 20 COLUMBIA LAW REV. 344.